Supreme Court, U.S.
FILED
MAR 9 2001
CLERK

No. 00-1275

In The

Supreme Court of the United States

JEFFREY PLUMMER,

Petitioner,

v.

ABB INDUSTRIAL SYSTEMS, INC., DON HAYWOOD, AND DICK CANTER,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Sixth Circuit

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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PARTIES TO THE PROCEEDING

The Parties to this Proceeding are those named in the Caption of this case. The employer has operated under several different legal names since Petitioner began his employment in January 1990. The corporate entity named in this action, ABB Industrial Systems, Inc., no longer exists, and the Company's facility in Columbus, Ohio, where Petitioner worked, is now called ABB Automation Inc.

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STATEMENT OF THE CASE

The facts presented to the United States District Court for the Southern District of Ohio, Eastern Division, and the United States Court of Appeals for the Sixth Circuit are straightforward. The District Court accurately restated these facts at pages 6 through 17 of its Decision. [Petition Appendix pp. 6a-17a.][1] Briefly stated, Petitioner's employment with ABB began on January 15, 1990, when he was hired as a Machinist in the Company's Metal Fabrication Division (which translates blueprints into metal fabricated parts), and ended on July 31, 1996, when he resigned. The gravamen of Petitioner's lawsuit against Respondents is that he was subjected to a sexually hostile work environment during the five years that he worked for ABB; that the Company retaliated against him for complaining about this environment; and that, as a result, his working conditions became so intolerable that he was forced to resign his position.

The factual basis Petitioner offers in support of his claims consist of the following:[2] First, Petitioner asserts that, sometime in 1993, Respondents Haywood and Hustead (Petitioner's fellow employees), inappropriately asked him about his sexual orientation. Second, Petitioner claims that visual materials, which he considers to be

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[1] All references to Appendix pages refer to the Petition's Appendix.

[2] The facts set forth in the Petition are, in many respects, manifestly at odds with those related by Petitioner in his deposition, and become more embellished by Counsel as this case has progressed. Indeed, Petitioner concedes that there may be "some conflict" between his deposition testimony and other evidence he presented to the District Court. [Petition p. 18.]

*pornographic, were placed in his work station and throughout the general work areas at ABB. Petitioner claims that, sometime in 1993, he complained to his supervisor, Maurey Parsons, that it was inappropriate to permit employees to hang nude pictures of women in the machine shop and to allow them to read *Playboy* magazines at work, and that he believed this conduct was interfering with people's work.

Aside from this one conversation with Parsons in 1993, Petitioner never reported his concerns to anyone in management or in Human Resources, nor did he ever take down any of the pornographic materials allegedly hanging in the shop. Further, Petitioner never told anyone at ABB that pornographic materials were being placed in the desk drawers at his work station. In fact, the first time Petitioner mentioned the existence of the materials allegedly placed in his work station was during his deposition in July 1998, two years after his employment ended. Petitioner also concedes that he does not know the identity of the person who allegedly placed these materials in his desk drawers, their motive for doing so, or whether it was done intentionally to harass him.

Third, Petitioner claims that, in August 1995, Respondent Haywood created a computer depiction of female breasts on the computer Petitioner and other ABB employees used. In October 1995, Petitioner reported his complaint about Haywood and the computer drawing to Mari Jo Cary, ABB Human Resource Manager. According to Petitioner, Cary told him that the matter would be investigated. Petitioner asserts that, on January 5, 1996, he met with Vice President Ken Morris and Supervisor Bill Bertch to report the computer drawing. However, the

itinerary for the meeting, and the written account made after the meeting, reveals that at no time did Petitioner tell Morris or Bertch that he thought the drawing was pornographic or that he thought Haywood was sexually harassing him. Rather, the account signed by Petitioner reveals his concern that, if Haywood had access to his (Petitioner's) computer, files might be deleted. Petitioner also concedes that after he reported these concerns to Cary and Morris, Haywood was reprimanded for making the drawing.

Fourth, Petitioner maintains that someone deleted files from the computer he used at ABB. However, Petitioner has no idea who deleted the files, why the person deleted them, whether it was done intentionally, or whether it was purposely done to harass him. When Petitioner reported his complaints regarding the missing files to Vice President Morris, the Company conducted an investigation into the files, but no one could determine that any files were actually missing.

Fifth, Petitioner asserts that Respondent Canter, along with two of Petitioner's supervisors, threatened his job after he complained to Human Resources about what he perceived to be harassing conduct directed at him. Petitioner asserts that, after he complained to Canter about Haywood's computer drawing and told him that he would report it to Human Resources, Canter advised Petitioner that "there would be strong repercussions" if he did so, which Petitioner interpreted to be a threat to his job. Despite Canter's alleged threat, Petitioner reported Haywood to Human Resources and never suffered any adverse action. Although Canter could not possibly have disciplined, demoted or terminated Petitioner (because Canter was not in a supervisory position

and did not have that kind of authority), Petitioner claims that Canter, in an effort to force Petitioner to quit, retaliated against Petitioner by causing problems for him at work.

As a result of Petitioner's low scores on his 360 Performance Review, he was required to meet with Vice President Morris to discuss the results of the review and the efforts Petitioner would need to take to improve his performance. In one of these meetings, Petitioner claims that he told Morris that the low scores on his review were a result of Haywood's and Canter's attempts to retaliate against him because of his complaint about the computer drawing. According to Petitioner, Morris told him that if he ever mentioned Haywood again, he would fire Petitioner. However, the undisputed facts reveal that Morris never fired Petitioner. To the contrary, he told Petitioner that, if his performance improved, he could have a future with ABB. Morris spent time counseling Petitioner because he thought Petitioner would be an asset to the organization if he could overcome some behavioral problems.

Petitioner also claims that he was retaliated against when Supervisor Mike Sallows threatened his job in July of 1996 – a short time before Petitioner voluntarily resigned on July 31 of that year. Petitioner alleges that Sallows gave him four reasons why he could fire Petitioner on the spot: (1) for wearing shorts in the shop, (2) for working overtime without permission, (3) for missing work, and (4) for deleting computer files. Petitioner alleges that Sallows threatened to move him to the third shift, but concedes that Sallows never did. The undisputed fact remains that Sallows never fired Petitioner,

and, like Morris, Sallows assured Petitioner that, if his performance improved, he had a future with ABB.

Finally, Petitioner asserts that, while he was on a medical leave of absence from work due to a non-work related hand injury, the Company harassed him to return to work before he was physically able. In early 1996, Petitioner suffered a hand injury in a motorcycle accident, and was placed on a medical leave of absence from work. During this medical leave, which lasted for more than five weeks, representatives from the Company contacted Petitioner to inquire as to when he would be able to return to work. When Petitioner told the Company's nurse to contact his doctor (Dr. Ralph Rohner) regarding his return to work, the Company contacted Dr. Rohner's office and asked him to examine Petitioner and determine when he could return to work and under what restrictions. The Company communicated with Dr. Rohner's office only on two occasions, the initial written request and one follow up request. Petitioner contends that Dr. Rohner told him that the Company wanted Petitioner back at work, even if just to counsel other employees. Based on the job description offered by the Company, Dr. Rohner released Petitioner to return to work, with certain restrictions. According to Petitioner, the Company was attempting to return him to work before he was physically ready, in an effort to harass him. However, Dr. Rohner testified that Petitioner's health was not compromised in any way by the release to return him to work, with restrictions.

On May 1, 1998, Petitioner filed this lawsuit against ABB, Haywood and Canter, alleging causes of action for: (1) "same-sex" sexual harassment and reverse sex discrimination under Ohio Revised Code Chapter 4112

(Ohio's anti-discrimination statute) and under Title VII of the 1964 Civil Rights Act, 42 U.S.C. §2000e, *et seq.* ("Title VII"); (2) negligent supervision; (3) wrongful discharge; and (4) intentional and/or negligent infliction of emotional distress. Following extensive discovery, Respondents filed a Motion for Summary Judgment, on June 1, 1999, which was opposed by Petitioner. On October 13, 1999, the District Court issued an Opinion and Order dismissing Petitioner's claims. On November 2, 1999, Petitioner timely filed his Notice of Appeal to the United States Court of Appeals for the Sixth Circuit. On November 9, 2000, the Sixth Circuit issued a Memorandum Opinion and Order affirming the judgment of the District Court. Thereafter, Petitioner filed the instant Petition. For the reasons presented below, Respondent respectfully submits that the Court deny the Petition.

REASONS FOR DENYING THE PETITION

REVIEW SHOULD BE DENIED BECAUSE THIS COURT, IN *ONCALE*, ESTABLISHED THE EVIDENTIARY STANDARD FOR A SAME-SEX SEXUAL HARASSMENT CLAIM, AND THE DECISIONS OF THE LOWER COURTS IN THE INSTANT CASE DO NOT CONFLICT WITH THE DECISION OF THIS COURT IN *ONCALE*

Pursuant to Supreme Court Rule 10, "[r]eview on a writ of certiorari is not a matter of right, but of judicial discretion." "A petition for a writ of certiorari will be granted only for compelling reasons," such as where:

> A state court or a United States court of appeals has decided an important question of federal law that has not been, but should be, settled by

> this Court, or has decided an important federal question in a way that conflicts with the relevant decisions of this Court.

Sup. Ct. R. 10. Petitioner summarizes his argument in support of his petition as follows:

> Same-sex harassment occurs and is actionable. *Oncale v. Sundowner Offshore Services, Inc.*, 118 S. Ct. 998 (1998); *Yeary v. Goodwill*, 107 F.3d 443 (6th Cir. 1997). The elements developed to date to demonstrate same-sex sexual harassment were all satisfied in this matter: 1) the harassment complained of was because of sex; 2) the harasser is an unusual actor who discriminates against his or her own sex; 3) the employee was subjected to unwelcome sexual harassment; 4) the charged sexual harassment had the effect of unreasonably interfering with the Petitioner's work performance and creating an intimidating, hostile or offensive working environment; and 5) the existence of respondeat superior liability. *Griswold v. Fresenius USA*, 978 F. Supp. 718, 730 (1997) [sic]; *Yeary v. Goodwill*, 107 F.3d 443 (6th Cir. 1997) and *Oncale v. Sundowner Offshore Services, Inc.*, 118 S. Ct. 998 (1998). Although each of the elements were satisfied in this matter, the lower Courts none-the-less refused to allow the case to proceed to trial. Petitioner submits that the lower Court decisions were based on a reluctance to accept male on male sexual harassment as well as the fact that there is little guidance provided in this novel area for determining what constitutes an actionable same sex sexual harassment claim. Thus, the instant Petition for Certiorari has been filed in an attempt to secure further clarity in this area of the law.

[Petition p. 10.]

Petitioner has cited no legal authority to support these arguments. He presents no reasons why this Court should accept this same-sex sexual harassment case for review, nor any reason to set this case apart from any other sexual harassment case. Petitioner has cited neither contrary legal authority in the Sixth Circuit nor a split among the Circuits that would justify this Court allocating time on its limited docket to consider this routine sexual harassment case. In fact, Petitioner's argument for review is simply a rehash of his already rejected arguments as to why the District Court's decision was incorrect. He does not claim that the lower Court applied an incorrect legal standard; but, rather disagrees with its application of the facts. However, mere disagreement with a lower court decision is not grounds for Supreme Court review.[3]

A. The *Oncale* decision sets forth the standard for a viable same-sex sexual harassment claim.

Incredibly, Petitioner believes that:

> Although this Court in 1998 in *Oncale v. Sundowner Offshore Services, Inc.*, 118 S. Ct. 998, 1003 (1998), made it clear that [same-sex sexual harassment] claims are actionable, further guidance is now needed from this Court as to the circumstances under which an employer may be

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[3] Supreme Court Rule 10 provides: "[a] petition for a writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law."

> held liable for same sex sexual discrimination and harassment.

[Petition p. 9.] However, the evidentiary standard set forth in *Oncale* for a same-sex sexual harassment claim is clear. Indeed, this standard is the same one that applies to sexual harassment claims where the alleged harasser is the opposite sex of his or her victim. In making his groundless assumption regarding the understanding of the lower courts, Petitioner feigns ignorance of this Court's explanation in *Oncale* of the circumstances under which an employer may be held liable for same-sex sexual discrimination and harassment.

In *Oncale*, this Court resolved a conflict among the lower courts regarding the viability of a same-sex sexual harassment claim when it unanimously held that "sex discrimination consisting of same-sex sexual harassment is actionable under Title VII." 523 U.S. at 82. In reaching this determination, this Court observed that "Title VII prohibits 'discrimination . . . because of . . . sex' in the 'terms' or 'conditions' of employment. Our holding that this includes sexual harassment must extend to sexual harassment of *any kind that meets the statutory requirements.*" 523 U.S. at 79-80 (emphasis added). This Court also reiterated the now well-established rule of law that it set forth in *Harris v. Forklift Systems, Inc.*, 510 U.S. 17 (1992), that: " '[w]hen the workplace is permeated with discriminatory intimidation, ridicule, and insult that is sufficiently severe or pervasive to alter the conditions of the victim's employment and create an abusive working environment, Title VII is violated.' " 523 U.S. at 78.

The respondents and their *amici* in *Oncale* argued to the Court that recognizing a cause of action for same-sex sexual harassment would "transform Title VII into a general civility code for the American workplace." *Id.* at 80. Rejecting this argument, the Court stated:

> [T]hat risk is no greater for same-sex than for opposite-sex harassment, and is adequately met by careful attention to the requirements of the statute. . . . 'The critical issue, Title VII's text indicates, is whether members of one sex are exposed to disadvantageous terms or conditions of employment to which members of the other sex are not exposed.'

Id. (quoting *Harris*, 510 U.S. at 25). The Court further explained that:

> As we emphasized in *Meritor* and *Harris*, [Title VII] does not reach genuine but innocuous differences in the ways men and women routinely interact with members of the same sex and of the opposite sex. The prohibition of harassment on the basis of sex requires neither asexuality nor androgyny in the workplace; it forbids only behavior so objectively offensive as to alter the 'conditions' of the victim's employment. . . . We have always regarded that requirement as crucial, and as sufficient to ensure that courts and juries do not mistake ordinary socializing in the workplace – such as male-on-male-horseplay or intersexual flirtation – for discriminatory 'conditions of employment.'

Oncale, 523 U.S at 81 (quoting *Harris*, at 21).

The Court stated that "the objective severity of harassment should be judged from the perspective of a

reasonable person in the plaintiff's position, considering 'all the circumstances.' In same-sex (as in all) harassment cases, that inquiry requires careful consideration of the social context in which particular behavior occurs and is experienced by its target." 523 U.S. at 81 (quoting *Harris*, at 23). Finally, the Court stated that "[c]ommon sense, and an appropriate sensitivity to social context, will enable courts and juries to distinguish between simple teasing or roughhousing among members of the same sex, and conduct which a reasonable person in the plaintiff's position would find severely hostile or abusive." *Id.* at 82. Contrary to Petitioner's argument in the instant case, the *Oncale* opinion provides the lower courts with ample "guidance" and "clarity" regarding the standard for an actionable same-sex sexual harassment claim under Title VII.

Petitioner has proffered nothing but his own opinion that, since the Court's decision in *Oncale*, the lower courts lack guidance as to what evidence is sufficient to create an actionable same-sex sexual harassment claim. Even the most cursory review of published decisions in same-sex sexual harassment cases establishes that the lower courts, including the Sixth Circuit, are fully cognizant of the "circumstances under which an employer may be held liable for same sex discrimination and harassment," as set forth in *Oncale*.

For example, the Sixth Circuit, almost one year before issuing the instant decision, properly set forth the requirements for a same-sex sexual harassment claim in *Martin v. Schwan's Sales Enterprises, Inc.*, 1999 U.S. App. LEXIS 31975, *8 (6th Cir. 1999). In that case, the Sixth Circuit *reversed* the district court's grant of summary judgment on five male plaintiffs' same-sex hostile work

environment claims. After acknowledging a cause of action for same-sex sexual harassment under *Oncale*, the Sixth Circuit stated that "[f]or sexual harassment to be actionable, it must be 'sufficiently severe or pervasive to alter the conditions of employment and create an abusive working environment.' " *Martin*, 1999 U.S. App. LEXIS at *5 (quoting *Meritor*, 477 U.S. at 67). The Court further recognized that "[t]he analysis has an objective and subjective prong: it must 'create an environment that a reasonable person would find hostile or abusive, and the victim must subjectively regard that environment as abusive.' " *Id.* at *5 (quoting *Black v. Zaring Homes, Inc.*, 104 F.3d 822 (6th Cir. 1997)). Finally, the Sixth Circuit stated that "[a]lthough no bright line test exists to determine exactly when an environment is hostile, the Supreme Court has explained that all the circumstances must be considered and has described factors that might be considered such as the frequency of the conduct and whether it is physically intimidating or simply an offensive utterance." *Id.* at *6.

Applying these well-established principles, the Sixth Circuit determined in *Martin*, that "[the district court's] finding that the conduct did not occur with regularity simply disregards the extensive testimony that the conduct occurred almost daily from the first day of each plaintiff's employment." *Id.* Moreover, the Sixth Circuit found that the lower court "violat[ed] the Supreme Court's directive to look to the 'totality of the circumstances,' " *Martin*, 1999 U.S. App. LEXIS at *7, when the district court "found that there was no proof that the conduct unreasonably interfered with plaintiffs' ability to perform their jobs because they spent most of the time out on the road and not in the presence of [the alleged harasser]." *Martin*, at *6-7. The

Sixth Circuit stated that, "even if the conduct occurred only briefly each day, the continual day-after-day exposure to this type of behavior may interfere with job performance sufficiently to be actionable." *Id.* at *7.

Similarly, in *Lack v. Wal-Mart Stores, Inc.*, 2001 U.S. App. LEXIS 2084, *12-13 (4th Cir. 2001), the Fourth Circuit reversed a jury verdict in favor of the plaintiff, who alleged same-sex sexual harassment in violation of the West Virginia Human Rights Act, where the evidence indicated that the plaintiff was not discriminated against "based upon his sex" as required by *Oncale*. In *Shepherd v. Slater Steels Corp.*, 168 F.3d 998 (7th Cir. 1999), also a same-sex sexual harassment case, the Seventh Circuit recognized that:

> The single question that we need to answer after *Oncale* is a straightforward one: Can one reasonably infer from the evidence before us that the harassment [the plaintiff] describe[d] was discrimination 'because of' his sex? *The Supreme Court has now cleared away much of the doctrinal underbrush that previously vexed courts confronting same-sex harassment claims. There is no longer any doubt that Title VII reaches claims of same-sex harassment. It is also settled that same-sex harassment does not amount to sex discrimination only when it is motivated by sexual desire. And it is clear that the sexual content or connotations of workplace harassment do not automatically render that conduct sex discrimination.* Again, 'the critical issue, Title VII's text indicates, is whether members of one sex are exposed to disadvantageous terms or conditions of employment to which members of the other sex are not exposed.'

Shepherd, 168 F.3d at 1008-1009 (citing *Oncale*, at 79-81; *Harris*, 510 U.S. at 25) (emphasis added). *See also Raum v. Laidlaw Ltd.*, 1999 U.S. App. LEXIS 8219 (2nd Cir. 1999), where the Second Circuit acknowledged that "[u]nder *Oncale*, a plaintiff must allege that the conduct at issue was not merely tinged with offensive sexual connotation, but actually constituted discrimination . . . because of . . . sex. The mere utterance of an . . . epithet which engenders offensive feelings in an employee does not sufficiently affect the conditions of employment to implicate Title VII." *Raum*, 1999 U.S. App. LEXIS at *4 (internal quotation marks omitted).

Thus, there is clearly no confusion on the part of the Sixth Circuit, nor among the Circuits, as to the legal standard for same-sex sexual harassment claims.

B. The lower courts properly applied the standard for an actionable same-sex sexual harassment claim set forth in *Oncale* and did not err in holding that Petitioner failed to establish a genuine issue of material fact as to Petitioner's same-sex sexual harassment claim.

Petitioner here asserts that the lower courts did not permit his same-sex harassment claim to proceed to trial "because of their reluctance to accept same sex sexual harassment claims, failure to properly apply general male/female sexual harassment precedent to the instant same sex harassment claim and because of the lack of any legal precedent dealing specifically with same sex sexual harassment. . . . " [Petition p. 23.] Petitioner's arguments are disingenuous.

There is absolutely no evidence of any such "reluctance" on the part of either the District Court or the Circuit Court. The District Court acknowledged in its opinion that the *Oncale* decision creates a cause of action for same-sex harassment, and extensively quoted this Court's analysis in *Oncale* of the requirements for such a claim. [District Court Mem. Op. and Order, App. B pp. 19a-21a.] The District Court then recognized that, "[i]n *Oncale*, the Supreme Court held that workplace harassment may violate Title VII's prohibition against 'discriminat[ion] . . . because of . . . sex.' 42 U.S.C. §2000e(2)(1), even when the harasser and the harassed employee are of the same sex." [*Id.* at 19a.] The District Court also emphasized this Court's admonishment in *Oncale* that, "[w]hatever evidentiary route the plaintiff chooses to follow, he or she must always prove that the conduct at issue was not merely tinged with offensive sexual connotations, but actually constituted *'discriminat[ion] . . . because* of . . . sex." [*Id.* at 20a (quoting *Oncale*, at 81) (emphasis in original).]

In addition, the Memorandum Opinion clearly reflects the District Court's reliance upon "general male/female sexual harassment precedent" in analyzing Petitioner's same-sex harassment claim. [*Id.* at 17a-19a.] First, the District Court properly stated that "[i]n *Meritor Savings Bank v. Vinson*, 477 U.S. 57 (1986), the Supreme Court held that a plaintiff may establish a violation of Title VII by proving that discrimination based on sex has created a hostile or abusive work environment." [*Id.* at 17a.] Continuing its reference to the *Meritor* ruling, the District Court also acknowledged that "[f]or sexual harassment to be actionable, it must be sufficiently severe or pervasive

'to alter the conditions of [the victim's] employment and create an abusive working environment.' " [*Id.* at 18a (quoting *Meritor*, at 67).] The District Court accurately referenced in its Opinion the "severe and pervasive" discrimination standard of liability for a sexual harassment that this Court articulated in *Meritor* and reaffirmed in *Harris*. [*Id.* at 17a-18a.] The District Court then quoted the admonition in *Harris* and *Meritor* that "mere utterance of an epithet which engenders offensive feelings in an employee . . . does not sufficiently affect the conditions of employment to implicate Title VII." [*Id.* at 18a-19a (internal quotation marks omitted).] The District Court acknowledged that " '[c]onduct that is not severe or pervasive enough to create an objectively hostile or abusive work environment – an environment that a reasonable person would find hostile or abusive – is beyond Title VII's purview.' " [*Id.* at 19a (quoting *Harris*, at 21).] Further, the District Court quoted what is now commonly referred to as the "totality of the circumstances" test originally set forth in *Harris*. [*Id.*]

After articulating the standards enunciated by this Court for a viable same-sex sexual harassment claim, the District Court then properly applied these standards to the facts of the instant case. First, the District Court determined that "[t]he three comments made by Haywood and Hustead in 1993 [regarding Petitioner's sexual orientation] were isolated and sporadic." [*Id.* at 22a.] With respect to the pornographic literature, the District Court noted that:

> [Petitioner] conced[ed] that [the pornographic and offensive materials allegedly displayed in

> the common work areas] were not displayed in order to harass him. He has offered no evidence that the presence of these materials created a sexually hostile work environment in the machine shop which would have been perceived as such by a reasonable person or that he subjectively perceived them as such.

[*Id.*] Regarding the nude photographs and other offensive materials that were allegedly placed in Petitioner's toolbox, drawer and desk, the District Court acknowledged that this evidence "[came] closer to raising a genuine issue of material fact on the issue of sexual harassment," [*Id.*], but further stated: "however, there is no basis for *respondeat superior* liability inasmuch as the perpetrator or perpetrators are unknown and plaintiff never complained to his employers about this conduct." [*Id.* at 23a.]

Regarding the offensive drawing on Petitioner's computer, the District Court determined that:

> Haywood's August, 1995 drawing of a pair of concentric circles labeled 'Tits' does not either alone, or in combination with any of the other matters [Petitioner] complains of, elevate this case to the status of a litigable sexual harassment claim. Assuming that Haywood intended this drawing to be seen by [Petitioner], it was nothing more than a juvenile, prank [sic]. No reasonable person would have viewed this silly but innocuous drawing as sexually derogatory, hostile, intimidating or offensive.

[*Id.*]

Finally, the District Court determined that, "[c]onsidering the totality of the circumstances, a jury

could not reasonably find that the matters plaintiff complains of as sexual harassment, at least those to which ABB had actual or constructive knowledge, was so severe or pervasive so as to alter the conditions of his employment and create an abusive environment." [*Id.*] The Sixth Circuit agreed. [Sixth Circuit Mem. Op., Appendix A pp. 1a-2a.]

The foregoing establishes that, contrary to Petitioner's assertion, the District Court exhibited its familiarity with both the evidentiary standard for a same-sex sexual harassment claim and the standards of "general male/female sexual harassment precedent."

CONCLUSION

Petitioner presents no reasons for the Court to accept his Petition other than his continuing disagreement with court decisions. This Court considered the issues raised in this Petition during its 1998 term, when it established a cause of action for same-sex sexual harassment, and Petitioner has presented no reasons for the Court to revisit these issues. There is no lower court decision that directly conflicts with the Court's ruling in *Oncale*, including the instant decisions of the District Court and the Sixth Circuit.

Contrary to Petitioner's arguments, the lower Courts properly applied the law and facts to conclude that Petitioner presented insufficient evidence as a matter of law to establish his same-sex harassment claim and those related to it. Therefore, this Petition must be denied.

Dated this 9th day of March, 2001.

Respectfully submitted,

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